

BEFORE THE MINNESOTA PUBLIC UTILITIES COMMISSION

Gregory Scott
Marshall Johnson
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Chair
Commissioner
Commissioner
Commissioner

In the Matter of an Inquiry Into Possible Effects
of Financial Difficulties at NRG and Xcel
on NSP and its Customers and Potential
Mitigation Measures

ISSUE DATE: October 22, 2002

DOCKET NO. E,G-002/CI-02-1346

ORDER REQUIRING ADDITIONAL
INFORMATION AND AUDIT

PROCEDURAL HISTORY

On August 8, 2002, the Commission met to consider the possible effects of financial difficulties at NRG Energy, Inc. (NRG) and Xcel on Northern States Power Company (NSP) and its customers. The Commission decided to open a docket and directed Xcel to respond to questions and provide information, as it agreed to do, by August 19, 2002.

On August 8, 2002, Wayne H. Brunetti, Chairman and Chief Executive Officer of Xcel Energy, submitted a letter to the Commission, making certain representations and commitments. This letter is also included as Attachment 1 to Xcel's 8/19/02 Response.

On August 13, 2002, the Commission issued its Notice of Procedures and Comment Period, with a list of questions and information requested from Xcel and NSP. The Notice sought comments from the Minnesota Department of Commerce (the Department) and the Residential and Small Business Utilities Division of the Office of the Attorney General (RUD-OAG) by September 4, 2002 on the completeness of Xcel's response and on what further information and procedures may be appropriate.

On August 19, 2002, Xcel and NSP submitted their response to the August 13, 2002 Notice and filed workpapers, which were copies of various past filings with the Securities and Exchange Commission (SEC).

On August 26 and 27, 2002, Xcel submitted copies of various additional 8-K forms recently filed with the SEC.

On September 3, 2002, the RUD-OAG filed comments. On that same day, the Commission received a copy of a transcript of the August 8, 2002 Commission meeting on this matter.

On September 4, 2002, the Department and Robert S. Carney, Jr. (Mr. Carney) filed comments.

On September 6, 2002, Xcel filed reply comments.

On September 11, 2002, the DOC and Mr. Carney filed additional comments.

On September 16, 2002, Xcel filed copies of September 13, 2002 SEC Form 8-K reports for Xcel and for NRG.

On September 24, 2002, Xcel filed a letter in which, among other things, it agreed with the recommendations made by the Department of Commerce. Xcel also stated that it understood Commission Staff's concern regarding the need for additional information and agreed to work with the agencies to provide the necessary detail.

The Commission met on September 25, 2002 to consider this matter.

FINDINGS AND CONCLUSIONS

I. ORIENTATION TO INQUIRY

The general purpose of this inquiry is to explore potential impacts of the financial difficulties of Xcel and its subsidiary NRG, Inc. on another Xcel subsidiary, the regulated utility Northern States Power Company (NSP), and NSP's ratepayers. The Commission also seeks ways to protect NSP's ratepayers from any negative impacts of those difficulties.

II. XCEL'S COMMITMENTS TO MINNESOTA RATEPAYERS TO DATE

To record the progress in this inquiry, the Commission acknowledges the following commitments made by Xcel in its Certification to the SEC (Docket No. E-002/M-00-1553), NSP/New Centuries Merger Docket (Docket No. E,G-002/PA-99-1031) and in the course of this docket prior to the September 25, 2002 hearing:

- (a) Xcel and NSP are committed to meeting the utility's obligation under Minnesota law and Commission Orders to provide adequate service at reasonable costs, and to shield ratepayers from any direct or indirect effect of NRG's investments in exempt wholesale generators (EWGs) and foreign utility corporate organizations (FUCOs) - page 2 of 8/19/02 Response;
- (b) NSP will not seek a rate increase until 2006, unless the exceptions to the merger agreement are met (page 2 of Brunetti letter of 8/8/02);
- (c) no NSP utility property in Minnesota will be encumbered for purposes other than operating the utility, and no Minnesota property will be used for the benefit of NRG or other non-utility purposes (page 2 of Brunetti letter of 8/8/02);
- (d) NSP will not seek recovery from Minnesota's ratepayers for costs and expenses incurred by NSP because of NRG's ownership of EWGs or foreign utility assets, and day-to-day operations will not be affected by these investments (page 2 of Brunetti letter of 8/8/02);

- (e) Xcel will provide the Commission, its staff, the Department of Commerce, and the Residential Utilities and Small Business Division of the Office of the Attorney General (RUD-OAG) the requested information needed to regulate NSP effectively and protect ratepayer interests (page 1 of 8/19/02 Response);
- (f) Xcel will adjust its Renewable Development Fund and Emissions Reduction Riders to remove any capital costs attributable to the NRG situation when a specific rate rider adjustment is established in future proceedings (page 20 of 8/19/02 Response);
- (g) NSP will make no inter-company loans to Xcel or NRG (page 5 of 9/6/02 Reply Comments);
- (h) Xcel will provide the following information: 1) monthly reports on NSP's actual year-to-date capital structure; and 2) monthly updates to its service quality plan for the rest of 2002 (rather than annually as now required);
- (i) NSP will pay for an independent audit of its service quality reporting;
- (j) Xcel stated it would provide both past and current pricing structures, as well as a comparison using the actual cost to Xcel Energy, Inc., within 20 days of the September 25, 2002 hearing (Sparby letter filed 9/24/02); and
- (k) Xcel stated it would file the report on the reintegration of NRG and the parties within 20 days of the September 25, 2002 hearing (Sparby letter filed 9/24/02).

III. ADDITIONAL SAFEGUARDS

A. Department Recommendations

As further ratepayer safeguards, the Commission will also adopt the Department's recommendations, which Xcel has agreed to, and require NSP to:

- (a) use the Commission-approved cost of capital in all its present and future filings before the Commission, where cost of capital is being used;
- (b) identify in its next rate case all issuances of debt and associated cost from June 1, 2002 until its next rate case in a manner that will facilitate a potential adjustment to mitigate impacts of adverse market factors due to NRG's situations;
- (c) provide in its next rate case a discussion and analysis of effects of NRG's financial situation on NSP's cost of common equity;
- (d) report any significant event for NSP-MN, Xcel or NRG and provide copies of any reports made to the SEC or any other federal agency from this day forward;

- (e) maintain service quality at or above levels that existed at the time of the Xcel merger by meeting or exceeding all service quality standards set for NSP.

B. Cross Default

Xcel acknowledged that its responses prior to the September 25, 2002 hearing did not provide a specific estimate of the cost of renegotiating the Xcel Energy, Inc. credit facilities. Xcel stated that the cost estimate for this new facility will vary over time due to both the tiered pricing structure of the agreement and variation in the amount of debt outstanding. Xcel stated that at this time, NSP does not have an inter-company loan from Xcel Energy, Inc. so the current cost to NSP is zero. Xcel agreed, however, to provide both past and current pricing structures, as well as a comparison using the actual cost to Xcel Energy, Inc.

The Commission will require NSP to provide estimates of the costs associated with the renegotiation of the cross-default provisions and update the information with actual costs as they become known. In addition, the Commission will hold Xcel to its commitment (Sparby letter filed 9/24/02) to provide both past and current pricing structures, as well as a comparison using the actual cost to Xcel Energy, Inc., within 20 days of the September 25, 2002 hearing.

C. Cost of Capital

Xcel agreed to file reports on debt costs on a quarterly basis and to work with parties and Staff so that there is agreement on the scope of the report. Xcel suggested that the quarterly reports could be filed within 30 days of the end of each quarter.

Xcel stated that it was willing to discuss the contingency ratios currently authorized in its capital structure. Xcel stated that NSP could make its proposal regarding contingency ratios in its planned November capital structure filing or sooner, as the Commission would direct.

Xcel agreed with the Department's recommendation to use the Commission-approved cost of capital in future proceedings until its next general rate case. Xcel stated that it did not object to parties being able to argue for a lower cost than was approved in the last general rate case, stating its expectation that the Commission would have to make findings in those proceedings regarding any adjustments to the cost of capital using generally accepted ratemaking principles.

Regarding the cost of capital issues and taking into account the Company's commitments to shield ratepayers from any direct or indirect effects of Xcel's investments in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs), the Commission will

- (a) require NSP to report, on a quarterly basis, all utility debt issuances made in the most recent quarter, the interest yield of those issuances, and the bond ratings of each utility issuing the bonds;
- (b) require NSP to maintain a record of this information and include the entire record as part of the Company's next rate case filing;
- (c) require NSP to file capital structures annually;

(d) require NSP, in future capital structure or security issuance filings, to provide more specific explanations of the purpose for the security issuance and disallow the explanation that funds will be used for "general corporate purposes"; and

(e) direct the Company to address, as part of an annual capital structure or securities issuance, the appropriate cost of capital to apply to filings for the next 12 months.

D. Service Quality

The parties and the Commission are concerned about and want to determine whether the financial difficulties of Xcel and NRG could adversely affect NSP's provision of safe, adequate, and reliable service. Xcel denied that its financial difficulties have reduced the Company's pre-merger service quality performance but indicated a willingness to work with the parties and Commission Staff to address any remaining concerns about this.

Regarding the recent allegations challenging the accuracy of NSP's service quality reporting, Xcel stated that these serious allegations should be investigated by an independent audit and that the Company would pay for this audit. Xcel stated that providing accurate information to government agencies is part of its Code of Conduct and is required by law.

The Commission will address the independent audit in another section of this Order. The Commission sees the service quality issues as going beyond the service quality reporting allegations to be addressed by the audit. The Commission will, therefore, direct the Company to work with interested parties to review historical data to determine what information is available regarding NSP's service quality and ensure that the same type of data is obtained on a going forward basis.

E. Integration of NRG into Xcel Operations

Xcel acknowledged the concern raised that its information regarding the Company's plans to restructure NRG lacked specificity. Xcel explained that its plans have been slowed as it worked through the interests of many affected parties. Xcel agreed to provide the Commission with detailed information about its plans for NRG, but stated that no plans have been finalized or approved to date. Xcel stated that the restructuring is an evolving process that is not complete and that any report, therefore, will require updating. The Company proposed to update the Commission on an on-going basis as the restructuring process proceeds.

The Commission will require Xcel to honor its agreement (Sparby letter filed 9/24/02) to file a full report on the reintegration of NRG within 20 days of the September 25, 2002 meeting. At a minimum, that report should

- (1) include in detail, the exact steps being taken in the reintegration of NRG;
- (2) detail where NRG resides within the overall organizational structure and provide detail as to the organizational structure of NRG after the reintegration;

- (3) include the specific duties and positions eliminated at NRG and how those positions and duties are now being or will be performed for the reintegrated NRG;
- (4) detail what services and costs are being charged to NRG through the service company;
- (5) detail what services and costs are provided directly by the other subsidiaries and how they are charged to NRG;
- (6) include a copy of the affiliated interest agreement referenced by Company personnel at the August 8 meeting as well as detail all of the changes to the existing affiliated interest agreements proposed as a result of the reintegration; and
- (7) detail any proposed changes to allocation factors.

F. Additional NRG-Related Requirements

The Company has also agreed to work with the regulators on cost allocation issues to protect ratepayers from NRG-related costs. The Commission will require Xcel to work with interested parties to assess the current cost allocation method for potential cost allocation changes resulting from the NRG activities and to identify any changes or modifications that may be necessary to protect NSP-MN from an increase in cost allocations due to NRG activities or reintegration.

The Commission will also require the Company to work with the Department, the OAG, and Commission Staff to develop specific language to assure that any direct or indirect cost impacts of NRG's investments in exempt wholesale generators (EWGs) and foreign utility companies (FUCOs) will not be borne by ratepayers.

Finally with respect to NRG, for each assurance that NSP or Xcel has cited as a protection that NRG's situation will not affect Minnesota customers, the Company will be required to

- a. provide the origin of the protection;
- b. detail the terms and conditions of the protection;
- c. explain the conditions under which the protection, or the terms and conditions of the protection, can be varied, waived or modified.

G. Foreign Utility Companies

In response to a suggestion that Xcel be required to obtain Commission approval for acquisitions of new EWGs and FUCOs, Xcel stated that NRG is trying to reduce the number of its power plants and agreed to forego the blanket approval previously granted by the Commission for any

new EWG and FUCO acquisitions.¹ The Company stated that it would seek Commission approval prior to NRG acquiring any new EWG or FUCO.

The Commission finds that this is reasonable in the circumstances and will require the Company to abide by this agreement.

H. Independent Audit of Xcel's Service Quality Reporting

Serious allegations have been made regarding the integrity of Xcel's service quality reporting. The Commission is determined to get to the bottom of these issues. The Company has also recognized the seriousness of the allegations and has offered complete cooperation and to fund an independent audit of its service quality (repair and maintenance) reporting.

Based on input from the two public agencies (the Department and the RUD-OAG) the Commission believes that an outside auditing entity, paid for by the Company but selected, directed, and working in cooperation with the two public agencies, is the best approach. The Commission recognizes that this auditing operation will require multiple skills (such as accounting, engineering and interviewing) and leaves it in the hands of the two agencies to arrange for a thorough and competent review of these allegations. The Commission will so order.

ORDER

1. The Commission acknowledges and hereby directs Xcel to abide by the commitments the Company has made in the previously noted dockets² and in this docket to protect NSP-MN customers (see above on pages 2-3 of this Order), including the following:
 - a. Xcel and NSP are committed to meeting the utility's obligation under Minnesota law and Commission Orders to provide adequate service at reasonable costs, and to shield ratepayers from any direct or indirect effect of NRG's investments in exempt wholesale generators (EWGs) and foreign utility corporate organizations (FUCOs) - page 2 of 8/19/02 Response;
 - b. NSP will not seek a rate increase until 2006, unless the exceptions to the merger agreement are met (page 2 of Brunetti letter of 8/8/02);
 - c. no NSP utility property in Minnesota will be encumbered for purposes other than operating the utility, and no Minnesota property will be used for the benefit of NRG or other non-utility purposes (page 2 of Brunetti letter of 8/8/02);

¹ See *In the Matter of Northern States Power Company's Petition for Certification to the Securities and Exchange Commission Regarding Investments in Foreign Utility Companies and Exempt Wholesale Generators*, ORDER GRANTING CERTIFICATIONS WITH CONDITIONS, Docket No. E-002/M-00-1553 (March 26, 2001).

² Xcel's Certification to the SEC (Docket No. E-002/M-00-1553) and the NSP/New Centuries Merger Docket (Docket No. E, G-002/PA-99-1031).

- d. NSP will not seek recovery from Minnesota's ratepayers for costs and expenses incurred by NSP because of NRG's ownership of EWGs or foreign utility assets, and day-to-day operations will not be affected by these investments (page 2 of Brunetti letter of 8/8/02);
 - e. to provide the Commission, its staff, the Department of Commerce, and the Residential Utilities and Small Business Division of the Office of the Attorney General (RUD-OAG) the requested information needed to regulate NSP effectively and protect ratepayer interests (page 1 of 8/19/02 Response);
 - f. to adjust Renewable Development Fund and Emissions Reduction Riders to remove any capital costs attributable to the NRG situation when a specific rate rider adjustment is established in future proceedings (page 20 of 8/19/02 Response);
 - g. that it will make no inter-company loans to Xcel or NRG (page 5 of 9/6/02 Reply Comments);
 - h. Xcel will provide the following information: 1) monthly reports on NSP's actual year-to-date capital structure; and 2) monthly updates to its service quality plan for the rest of 2002 (rather than annually as now required); and
 - i. NSP will pay for an independent audit of its service quality reporting.
 - j. Xcel is to have provided both past and current pricing structures, as well as a comparison using the actual cost to Xcel Energy, Inc., within 20 days of the September 25, 2002 hearing (Sparby letter filed 9/24/02); and
 - k. Xcel is to have provided the report on the reintegration of NRG and the parties within 20 days of the September 25, 2002 hearing (Sparby letter filed 9/24/02).
2. The Commission acknowledges and hereby directs Xcel to abide by its offer to provide the following information:
- a. monthly reports on NSP's actual year-to-date capital structure; and
 - b. monthly updates to its service quality plan for the rest of 2002 (rather than annually as now required);
3. As recommended by the Department, the Commission hereby directs NSP to:
- a. use the Commission-approved cost of capital in all its present and future filings before the Commission, where cost of capital is being used;
 - b. identify in its next rate case all issuances of debt and associated cost from June 1, 2002 until its next rate case in a manner that will facilitate a potential adjustment to mitigate impacts of adverse market factors due to NRG's situations;

- c. provide a discussion and analysis in its next rate case of effects at the time of NRG's financial situation on NSP's cost of common equity;
 - d. report any significant event for NSP-MN, Xcel or NRG and provide copies of any reports made to the SEC or any other federal agency from now on;
 - e. maintain service quality at or above levels that existed at the time of the Xcel merger by meeting or exceeding all service quality standards set for NSP;
4. (Cross Default) NSP shall provide estimates of the costs associated with the renegotiation of the cross-default provisions, and update the information with actual costs as they become known.
 5. (Cost of Capital) NSP shall report, on a quarterly basis, all utility debt issuances made in the most recent quarter, the interest yield of those issuances, and the bond ratings of each utility issuing the bonds. In addition, NSP shall maintain a record of this information and include the entire record as part of the Company's next rate case filing.
 6. (Cost of Capital) NSP shall file capital structures annually.
 7. (Cost of Capital) NSP shall, in future capital structure or security issuance filings, provide more specific explanations of the purpose for the security issuance than the explanation that funds will be used for "general corporate purposes."
 8. (Cost of Capital) NSP shall address, as part of an annual capital structure or securities issuance, the appropriate cost of capital to apply to filings for the next 12 months.
 9. (Service Quality) Regarding service quality issues, NSP shall work with interested parties to review historical data to determine what information is available regarding NSP's service quality and assure that the same type of data is obtained on a going forward basis;
 10. (Integration of NRG) Regarding the integration of NRG, Xcel shall
 - a. honor its commitment to file a full report on the reintegration of NRG with the parties and the Commission within 20 days of the September 25, 2002 meeting; at a minimum, that report should
 - (1) include in detail, the exact steps being taken in the reintegration of NRG;
 - (2) detail where NRG resides within the overall organizational structure and provide detail as to the organizational structure of NRG after the reintegration;
 - (3) include the specific duties and positions eliminated at NRG and how those positions and duties are now being or will be performed for the reintegrated NRG;
 - (4) detail what services and costs are being charged to NRG through the service company;

- (5) detail what services and costs are provided directly by the other subsidiaries and how they are charged to NRG;
 - (6) include a copy of the affiliated interest agreement referenced by Company personnel at the August 8 meeting as well as detail all of the changes to the existing affiliated interest agreements proposed as a result of the reintegration; and
 - (7) detail any proposed changes to allocation factors; and
 - b. work with interested parties to assess the current cost allocation method for potential cost allocation changes resulting from the NRG activities and identify any changes or modifications that may be necessary to protect NSP-MN from an increase in cost allocations due to NRG activities or reintegration.
11. (Company Assurances) For each assurance that NSP or Xcel has cited as a protection that NRG's situation will not affect Minnesota customers, the Company shall
 - a. provide the origin of the protection;
 - b. detail the terms and conditions of the protection;
 - c. explain the conditions under which the protection, or the terms and conditions of the protection, can be varied, waived or modified;
 12. (Company Assurances) The Company shall work with the Department, the OAG, and Commission Staff to develop specific language to assure that any direct or indirect cost impacts of NRG's investments in exempt wholesale generators and foreign utility companies will not be borne by ratepayers.
 13. (Foreign Utility Companies) The Commission accepts and hereby directs the Company to abide by its agreement, as stated in its letter dated September 24, 2002, to
 - (1) forego the blanket approval previously granted by the Commission for any new exempt wholesale generator (EWG) and foreign utility corporate organization (FUCO) acquisitions and
 - (2) seek Commission approval prior to acquiring any new EWGs or FUCOs.
 14. (Audit of Service Quality Reporting) The Residential Utilities and Small Business Division of the Office of the Attorney General and the Minnesota Department of Commerce shall arrange for an audit of the Company's repair and maintenance records, to be paid for by Xcel, bringing all relevant competencies to that task such as auditing, engineering, interviewing.

15. This Order shall become effective immediately.

BY ORDER OF THE COMMISSION

Burl W. Haar
Executive Secretary

(S E A L)

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